

TAB

**In The United States Patent and Trademark Office
Trademark Trial and Appeal Board**

Our Ref: 1092-029.001

In the Matter of:

A.J. Boggs & Company

Petitioner

Trademark: 911.NET

Registration No. 2551269

v.

Cancellation No. 040559

General Electric Capital Corporation
Intrado Inc.

Registrant



02-19-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

Trademark Trial and Appeal Board
Assistant Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

**Combined Motion for
Quash Notices of Testimony Deposition
Reset Testimony and Briefing Schedule
Change name of Registrant in Caption
Establish Single Service Address for Petitioner
Request for Telephone Conference**

Now comes, Gordon E. R. Troy, Esq. of the firm Gordon E. R. Troy, PC, attorney for Registrant, seeking a Combined Motion for: Quash Notices of Testimony Deposition, Reset Testimony and Briefing Schedule, Change name of Registrant in Caption, Establish Single Service Address for Petitioner, and Request for Telephone Conference. Registrant states the following factual background:

1. On January 23, 2003, Registrant filed and served a Motion to Compel Discovery. As of this date, February 14, 2003, Registrant has not received any response to its Motion to Compel (which was due February 13, 2003 *See, 37 C.F.R. §2.127*), nor has it received Petitioner's voluntary amended responses or any documents called for in the production requests.

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2. Petitioner's Testimony period opened on January 25, 2003.
3. Petitioner's Testimony period is scheduled to close on February 24, 2003.
4. On February 10, 2003, I, Gordon E. R. Troy, counsel for Registrant received a phone call from Melinda B. Burrma of the firm Howard and Howard Attorneys, PC seeking to schedule testimony depositions in the within case. I informed Ms. Burrma that I had filed a Motion to Compel, which she was aware of, suggested that the issues raised therein should be resolved by agreement of the parties, and stated that Testimony in this case should not proceed until Petitioner complied with the outstanding discovery issues which were subject to the Motion to Compel. Ms. Burrma responded that "lead counsel" (presumably Mr. Sadowski) was not available but would get back to me.
5. On February 12, 2003, at 6:21pm (after the close of business), an email was received by Registrant's counsel including three (3) notices to take testimony depositions in Lansing Michigan on February 18, 2003. Petitioner's counsel never called in advance to schedule said testimony depositions. Furthermore, the place noticed for the depositions is not in the city of any of the parties nor counsel for the parties.
6. As of this date, the only "service" of the notices to take testimony depositions are the unsigned "Word" files annexed to the email, attached hereto as Exhibit 1.
7. Annexed hereto as Exhibit 2, is a printout from the United States Postal Service showing that the Bloomfield Hills post office, Zip Code 48303, closes at 5:00pm, some 21 minutes after Petitioner's counsel forwarded the email including the notices to take testimony depositions and the unsigned certifications of service. As stated above, Registrant's counsel has still not received proper service of these notices.
8. Of the three people noticed for testimony deposition, only one person, Clarke Anderson, is identified in Petitioner's responses to Registrant's first discovery requests. In particular, Registrant's counsel brings to the attention of the Trademark

Trial and Appeal Board, Interrogatories No. 26 & 27 (annexed to Registrant's Motion to Compel as Exhibit 1) calling for the names of all experts and individuals whose testimony Petitioner will rely upon in the instant proceeding. Petitioner did not provide substantive responses to those Interrogatories. Similarly, Petitioner did not substantively respond to Registrant's Interrogatory No. 28 requesting the identification of all exhibits that Petitioner will rely upon in the testimony of these proceedings.

1. Quash Notices of Testimony Deposition

9. Not stated, and clearly implicit in the rules of the TTAB is the requirement of effective service. Petitioner has not effectively served the Notices. As of this date, Registrant has not received proper notice of the testimony depositions. 37 C.F.R. §2.119 does not provide for service of unsigned copies of Notices to be delivered by email as an effective means to serve an adverse party. Registrant has not been effectively served with the Notices, and are therefore defective on their face. However, and pursuant to TBMP Rule 521, Registrant is promptly filing the within Motion to Quash.
10. TBMP Rule 521 provides "a variety of grounds" under which a Motion to Quash Notice of Deposition may be made. Registrant alleges that reasons number 6 & 7 as contained within TBMP 521 are applicable. Firstly, even assuming that Petitioner properly served Registrant's counsel, Petitioner has not provided reasonable notice of the proposed deposition. (*See 37 CFR 2.123(c) and 2.124(b)(2); FRCP 30(b) and 31(a); and TBMP 404.04 and 713.05*). Registrant's counsel received the email "out of the blue" with no other communication as to the dates that Petitioner was planning on scheduling the testimony depositions. Furthermore, said ineffective notice is six (6) days prior to the scheduled testimony deposition, in a different city requiring air transportation in order to attend the testimony depositions. Petitioner did not provide

any advance notice, or seek Registrant's counsel input or availability prior to noticing the testimony depositions. Rather, and being half way through its testimony period, Petitioner proceeded to notice the testimony depositions. As was found in the case *Duke University v. Haggard Clothing Co.*, 54 USPQ2d 1443 (TTAB 2000), such practices are not sanctioned by the TTAB. Accordingly, Petitioner's notices do not provide reasonable notice of the testimony depositions and should accordingly be quashed.

11. TBMP Rule 521 further provides "(7) that the taking of the deposition should be deferred until after determination of a certain motion pending before the Board (see *Crown Wallcovering Corp. v. Wall Paper Manufacturers Ltd.*, 188 USPQ 141 (TTAB 1975))" Registrant submits that this is one such case. As stated herein, Registrant submitted a Motion to Compel prior to the Petitioner's testimony period opening in order to compel unanswered discovery. It would be an extraordinary disadvantage, and would prejudice Registrant if it did not have proper and complete responses to its Interrogatories, as well as having sufficient opportunity to review the documents and things requested for production, that Petitioner has failed to produce. Two of the three people noticed are never mentioned in any of the interrogatories served by Registrant. Rather, Registrant is entitled to have at least a minimum of information pertaining to the people noticed in order to properly prepare cross-examination of the witnesses. Should the TTAB allow Petitioner to proceed in the manner that it has chosen, it would be as if it is asking Registrant to defend its registration in a "trial by surprise." The case law has long acknowledged and taught us that this is not proper in civil matters. Accordingly, Registrant submits that the Notices to take testimony depositions be quashed.

2. Motion to Reset Trial and Brief Dates

12. The Board in its discretion may reset the trial dates. As stated above, Registrant filed a Motion to Compel in order to obtain discovery that it is entitled to in the within case. The responses to such discovery requests are important for Registrant to effectively prepare and defend the within cancellation action. Accordingly, Registrant respectfully requests that the Board reschedule the testimony and briefing schedule to commence at least thirty (30) days after Petitioner is ordered to properly respond to Registrant's outstanding discovery requests.

3. Change Name of Registrant in Caption

13. Registrant herein is Intrado Inc. Through an erroneous filing with the Trademark Office Assignment Division, a security interest was incorrectly filed as an assignment. This improper recordal has been corrected at Reel/Frame: 002518/0200. Accordingly, Registrant requests that the caption in this matter be accordingly changed.

4. Establish Single Service Address for Petitioner

14. The BISX system and the records of the TTAB for the within cancellation action indicate that the correct address for service is:

Jeffrey A. Sadowski, Esq.
Howard & Howard Attorneys, PC
4265 Okemos Rd Ste D
Okemos, MI 48864-3285

15. However the address indicated on Notices of Testimonial Deposition are:

Jeffrey A. Sadowski, Esq.
Howard & Howard Attorneys, PC
39400 Woodward Avenue, Suite 101
Bloomfield, Hills, MI 48304-5151

16. Pursuant to the rules of the TTAB, Registrant should only be required to communicate with opposing counsel at a single address. Accordingly, Registrant

requests that the TTAB identify the single correct address for service upon Petitioner in the within proceeding.

5. Request for Telephone Conference

17. TBMP Rule 521 provides: "When time is of the essence, the moving party may telephone the Board interlocutory attorney to whom the case is assigned and ask that the motion be resolved by telephone conference call. See 37 CFR 2.120(i)(1), and TBMP 502.07(a). However, the Board will not resolve a motion by telephone conference until a copy of the motion has been received by the Board. A copy of the motion should also have been received by every other party to the proceeding." Accordingly, Registrant is herewith serving its motion on Petitioner's counsel at both addresses via Express Mail and first class mail, as well as submitting same to the TTAB via Express Mail. Registrant's counsel will accordingly telephone the Board interlocutory attorney to ascertain the availability of a telephone conference in the within matter.

February 14, 2003

Respectfully submitted:
GORDON E. R. TROY, PC

By: 

Gordon E. R. Troy
Attorney for Registrant
PO Box 368
Charlotte, VT 05445

EXPRESS MAILING CERTIFICATION

"Express Mail" mailing label number : EV098570446US

Date of Deposit : February 14, 2003

I hereby certify that this Combined Motion for: Quash Notices of Testimony Deposition, Reset Testimony and Briefing Schedule, Change name of Registrant in Caption, Establish Single Service Address for Plaintiff and Request for Telephone Conference and any attachments are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated above and is addressed to the Assistant Commissioner of Trademarks 2900 Crystal Drive Arlington, VA 22202-3513.

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Combined Motion for: Quash Notices of Testimony Deposition, Reset Testimony and Briefing Schedule, Change name of Registrant in Caption, Establish Single Service Address for Plaintiff and Request for Telephone Conference has been served on counsel for Petitioner by depositing same with the United States Postal Service with sufficient postage as both express mail and first-class mail in envelopes addressed to:

TTAB Correspondence Address on File for Petitioner: (Express Mail EV098570450US)

Jeffrey A. Sadowski, Esq.
Howard & Howard Attorneys, PC
4265 Okemos Rd Ste D
Okemos, MI 48864-3285

Address indicated on Notices of Testimonial Deposition: (Express Mail EV098570450US)

Jeffrey A. Sadowski, Esq.
Howard & Howard Attorneys, PC
39400 Woodward Avenue, Suite 101
Bloomfield, Hills, MI 48304-5151

on February 14, 2003

Respectfully submitted:
GORDON E. R. TROY, PC

By: 

Gordon E. R. Troy
Attorney for Registrant
PO Box 368
Charlotte, VT 05445

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Exhibit 1

Gordon

From: Buurma, Melinda S. [MBuurma@HowardandHoward.com]
Sent: Wednesday, February 12, 2003 6:21 PM
To: Gordon
Subject: Notice of Testimonial Depositions



notice of test
02-07-03.doc (2...



notice of test JA
02-12-03.doc...



notice of test Eaton
02-12-03....

Mr. Troy,

Please see the attached Notices of Testimonial Depositions.

<<notice of test 02-07-03.doc>> <<notice of test JA 02-12-03.doc>>
<<notice of test Eaton 02-12-03.doc>>

If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Regards,
Melinda

Melinda B. Buurma
Intellectual Property Attorney
Howard and Howard Attorneys, P.C.
The Pinehurst Office Center, Suite 101
Bloomfield Hills, MI 48304-5151
MBuurma@howardandhoward.com
(248) 723-0308 - phone
(248) 645-1568 - fax

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**In The United States Patent and Trademark Office
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A.J. Boggs & Company

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v.

General Electric Capital Corporation
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Registrant

Trademark: 911.NET

Registration No. 2551269

Cancellation No. 040559

Notice of Testimonial Deposition

To: Gordon E. Troy
Attorney for registrant
PO Box 368
Charlotte, VT 05445

PLEASE TAKE NOTICE that pursuant to Rule 2.123, 37 C.F.R. §2.123, and the Federal Rules of Civil Procedure, Petitioner's attorney, Howard & Howard Attorneys, P.C., will take the testimonial deposition on oral examination of:

Clarke Anderson
4265 Okemos Rd., Suite D
Okemos, MI 48864

upon oath and before a notary public or other duly authorized officer authorized to administer oaths at the offices of Howard & Howard Attorneys, P.C. located at 222 N.

Washington Square, Lansing, Michigan 48933 commencing on February 18, 2003 at 9:00 a.m. and continuing thereafter until completed.

You are invited to attend to cross-examine.

Respectfully submitted,
HOWARD AND HOWARD ATTORNEYS, P.C.

Date: February 12, 2003

By: _____
Jeffrey A. Sadowski, Esq.
Brian D. Herrington, Esq.
Melinda B. Buurma, Esq.
Attorneys for Petitioner
39400 Woodward Avenue, Suite 101
Bloomfield Hills, Michigan 48304-5151
Phone: (248) 645-1483
Fax: (248) 645-1568

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above by first class mail at their respective business addresses (P.O. Box 368 Charlotte, VT 05445) with postage fully prepaid on February 12, 2003.

Melinda B. Buurma

**In The United States Patent and Trademark Office
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In the Matter of:

A.J. Boggs & Company

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02-19-2003

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Notice of Testimonial Deposition

To: Gordon E. Troy
Attorney for registrant
PO Box 368
Charlotte, VT 05445

PLEASE TAKE NOTICE that pursuant to Rule 2.123, 37 C.F.R. §2.123, and the Federal Rules of Civil Procedure, Petitioner's attorney, Howard & Howard Attorneys, P.C., will take the testimonial deposition on oral examination of:

James C. Anderson
4265 Okemos Rd., Suite D
Okemos, MI 48864

upon oath and before a notary public or other duly authorized officer authorized to administer oaths at the offices of Howard & Howard Attorneys, P.C. located at 222 N. Washington Square, Lansing, Michigan 48933 commencing on February 18, 2003 upon

completion of Clarke Anderson's testimony deposition and continuing thereafter until completed.

You are invited to attend to cross-examine.

Respectfully submitted,
HOWARD AND HOWARD ATTORNEYS, P.C.

Date: February 12, 2003

By: _____
Jeffrey A. Sadowski, Esq.
Brian D. Herrington, Esq.
Melinda B. Buurma, Esq.
Attorneys for Petitioner
39400 Woodward Avenue, Suite 101
Bloomfield Hills, Michigan 48304-5151
Phone: (248) 645-1483
Fax: (248) 645-1568

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Melinda B. Buurma

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To: Gordon E. Troy
Attorney for registrant
PO Box 368
Charlotte, VT 05445

PLEASE TAKE NOTICE that pursuant to Rule 2.123, 37 C.F.R. §2.123, and the Federal Rules of Civil Procedure, Petitioner's attorney, Howard & Howard Attorneys, P.C., will take the testimonial deposition on oral examination of:

Al Eaton
Great Lakes Comnet Inc.
6607 W. St Joseph
Suite 200
Lansing, MI 48917

upon oath and before a notary public or other duly authorized officer authorized to administer oaths at the offices of Howard & Howard Attorneys, P.C. located at 222 N. Washington Square, Lansing, Michigan 48933 commencing on February 18, 2003 upon

the completion of the testimony deposition of James C. Anderson and continuing thereafter until completed.

You are invited to attend to cross-examine.

Respectfully submitted,
HOWARD AND HOWARD ATTORNEYS, P.C.

Date: February 12, 2003

By: _____
Jeffrey A. Sadowski, Esq.
Brian D. Herrington, Esq.
Melinda B. Buurma, Esq.
Attorneys for Petitioner
39400 Woodward Avenue, Suite 101
Bloomfield Hills, Michigan 48304-5151
Phone: (248) 645-1483
Fax: (248) 645-1568

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Melinda B. Buurma

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Exhibit 2


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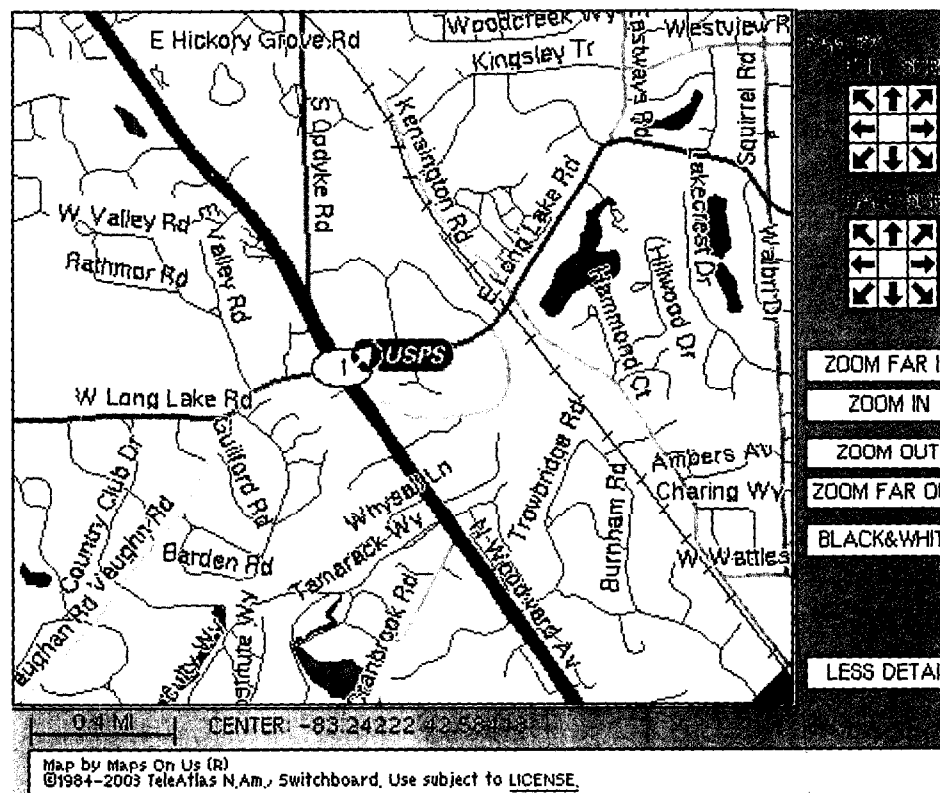
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Exhibit 3

Adversary Proceeding Data

Proceeding Number: 92040559
Proceeding Status and Date: Pending 2002-05-10
Interlocutory Attorney Name: FRANCES S WOLFSON
Proceeding Location: 845 - TTAB
Proceeding Location Date: 2003-02-11
Proceeding Charged To Location:
Proceeding Charged To Employee Name:
Date Proceeding Filed: 2002-04-19

Prosecution History

Entry#	Entry Date	Due Date	History Text
5	2003-01-24		D'S MOTION TO COMPEL DISCOVERY
4	2002-06-19		ANSWER
3	2002-05-10		PENDING, INSTITUTED
2	2002-05-10	2002-06-19	NOTICE AND TRIAL DATES SENT; ANSWER DUE:
1	2002-04-19		FILED AND FEE

Defendant Name Information:

GENERAL ELECTRIC CAPITAL CORPORATION

Owner Address:

2325 LAKEVIEW PARKWAY SUITE 700
ALPHARETTA, GA 30004

Correspondence Address:

GENERAL ELECTRIC CAPITAL CORPORATION
2325 LAKEVIEW PARKWAY, SUITE 700
ALPHARETTA, GA 30004

Defendant Property Information:

Serial Number: 75898002

Registration Number: 2551269

International Classes: 038

Application Status: 790 - Cancellation pending

Application Status Date: 2002-05-10

Application Location: 849 - TTAB

Application Date in Location: 2002-05-10

Law Office Assigned: L20 - TMEG Law Office 102

Attorney: Gordon E. R. Troy

Domestic Representative:

Application Charged to Location:

Application Charged to Employee:

Registration Date: 2002-03-19

Examiner Name: LYNN A LUTHEY

Mark: 911.NET

Application Filing Date: 2000-01-19

Plaintiff Name Information:

A.J. BOGGS & COMPANY

Owner Address:

**4265 OKEMOS ROAD, SUITE D
OKEMOS, MI 48864**

Correspondence Address:

**A.J. BOGGS & COMPANY
4265 OKEMOS RD STE D
OKEMOS, MI 48864-3285**

Plaintiff Property Information:

Serial Number: 78078405

Registration Number: 0

International Classes: 042

Application Status: 653 - Suspension letter - Mailed

Application Status Date: 2002-11-07

Application Location: M2D - TMO Law Office 111 - Docket Clerk

Application Date in Location: 2003-01-16

Law Office Assigned: M20 - TMO Law Office 111

Attorney:

Domestic Representative:

Application Charged to Location: M2J - TMO Law Office 111 - Centralized Suspended Docket

Application Charged to Employee:

Registration Date:

Examiner Name: ESTHER ANN BELENKER

Mark: 911.NET

Application Filing Date: 2001-08-09